



Supreme Court rules on powers of the Assessing Officer to withhold income-tax refunds

In a recent decision¹, the Supreme Court has ruled that once a valid notice for scrutiny assessment is issued by the Assessing Officer ('AO'), it is not necessary to grant refund due to the taxpayer as per return of income till such scrutiny assessment is completed (applicable upto assessment year ('AY') 2016-17).

Further analysing the amended provisions (applicable from AY 2017-18), the Supreme Court upheld action of the AO to withhold refund till completion of scrutiny assessment basis his satisfaction that grant of refund is likely to adversely affect the Revenue.

Background

Vodafone Idea Limited ('VIL' or 'taxpayer'), an Indian company, is engaged in providing telecommunication services in different circles. VIL filed its Return of Income ('ROI') for AY 2014-15 to AY 2017-18 claiming substantial refunds. For all the years, notices under section 143(2) of the Income-tax Act, 1961 ('the Act') were issued by the AO for conducting scrutiny assessments.

Due to inaction of the AO in processing the ROI and granting refunds for the abovementioned AYs, VIL filed a writ petition before the Delhi High Court.

During the pendency of the proceedings before the High Court, the AO issued a letter to VIL pointing out that considering the ongoing special audit proceedings, pending assessment proceedings and outstanding demands in taxpayer's case, it would be prejudicial to the interest of the Revenue to grant refunds to the taxpayer.

¹ Vodafone Idea Limited (earlier known as Vodafone Mobile Services Ltd.) v. ACIT (Civil Appeal No. 2377 of 2020)



The High Court ruled in favour of the Revenue stating that the claim for processing of refunds could not be allowed considering several factors including past demands and pendency of assessment proceedings which could result in substantial demands.

Aggrieved by the order of the Delhi High Court, VIL filed an appeal before the Supreme Court. The decision of the Supreme Court and principles emerging therefrom are summarized below:

I. AY 2014-15 to AY 2016-17 [i.e. years when section 143(1D)² of the Act was applicable]

Issues before the Supreme Court

- The main issue before the Supreme Court was whether summary processing of ROI and issuing refund under section 143(1) of the Act was mandatory even when a notice for detailed scrutiny was issued under section 143(2) of the Act.
- In the instant case, the notice for detailed scrutiny under section 143(2) of the Act was issued prior to the due date of processing the intimation under section 143(1) for all the years under consideration.
- During the pendency of appeal before the Supreme Court, the scrutiny assessment for AY 2014-15 was completed determining refund of Rs. 733 crores while for AY 2015-16, a demand of Rs. 582 crores was determined, which was stayed by the Income Tax Appellate Tribunal. The assessment proceeding for AY 2016-17 was not yet concluded.

Ruling of the Supreme Court

- The scrutiny notice under section 143(2) is issued to verify the correctness of the ROI to ensure that there is no tax avoidance. Therefore, processing of the ROI and payment of refund while such scrutiny proceedings are pending, would be contrary to initiation of such proceedings.
- The non-obstante clause under section 143(1D) of the Act and the legislative intent make it clear that where a notice is issued under section 143(2) of the Act, it shall not be necessary to undertake summary processing of the ROI and grant refund under section 143(1) of the Act and that the requirement to process the ROI shall stand overridden.
- The issuance of scrutiny notice is itself enough to attract the provisions of section 143(1D) of the Act and there is no legal requirement to issue any further intimation to the taxpayer for non-grant of refund.

² Section 143(1) provides that an intimation must be issued after processing the ROI within one year from the end of the financial year in which the ROI was filed and refund due to the taxpayer must be granted.

Section 143(1D) draws an exception and provides that where a scrutiny notice has been issued to the taxpayer under section 143(2), the AO has a discretion to not process the ROI.



- As regards refund of Rs. 733 crores for AY 2014-15, the same should be paid to the taxpayer within four weeks subject to any proceedings that the Revenue may consider appropriate to initiate as per the law.

The Revenue submitted that under section 245³ of the Act, it is entitled to adjust the refund payable against other outstanding demands. The Supreme Court refused to adjudicate on this aspect on the basis that said action was not even initiated.

- For AY 2016-17, the Supreme Court rejected the taxpayer's appeal to grant the refund as scrutiny notice was already issued and directed the AO to complete the assessment proceedings at the earliest.

II. AY 2017-18 (i.e. year when section 143(1D) was made inapplicable and section 241A⁴ was inserted)

Issues before the Supreme Court

- The main issue before the Supreme Court was whether the AO was legally correct in withholding the refund due as per the ROI, by resorting to provisions of section 241A of the Act.
- In the instant case, the AO issued an intimation under section 241A of the Act after recording reasons such as pending special audit proceedings, pending scrutiny proceedings and outstanding demand of more than Rs. 5,000 crores as sufficient basis for withholding of refund.
- The AO stated that there were sufficient reasons to believe that issue of refund will negatively impact the interest of the Revenue and thus made a proposal to withhold the refund, which was duly approved by the Principal Commissioner of Income Tax.

Ruling of the Supreme Court

- The Supreme Court observed that from AY 2017-18 onwards, a different regime has been contemplated by the Parliament and hence, requirements of section 241A must be satisfied before withholding of any refund.
- After going through all the records, the Supreme Court concluded that all the required steps were taken in accordance with the law and settled practice (i.e. issuance of notice under section 143(2) within prescribed time limit).

³ Section 245 of the Act states that where a refund is due to any taxpayer, the AO may set-off such amount against any demand payable by that person after intimating him in writing.

⁴ To address the grievance of delay in granting refund, section 143(1D) was made inapplicable from AY 2017-18 onwards. Simultaneously, to alleviate the concern of recovery of demands in doubtful cases, section 241A was inserted giving the AO the power to withhold the refund (after due approval), where its grant may adversely affect the revenue.



Further, the powers exercised by the AO under section 241A of the Act were after recording due satisfaction (duly approved) and within the statutory time limit and were therefore not in violation of any statutory requirements.

- As regards the “correctness” of the satisfaction recorded by the AO in terms of section 241A for withholding of refund, the Supreme Court refused to adjudicate on this aspect on the basis that it did not arise for its consideration in the present appeal.
- For AY 2017-18, the Court rejected the taxpayer’s appeal to grant the refund and directed the AO to complete the assessment proceedings at the earliest.

Dhruva Comments

This is an important ruling laying down various principles relating to processing of ROI, grant of refund and the powers of the AO to withhold refunds in specified circumstances.

The Supreme Court has held that where scrutiny notice is issued under section 143(2) of the Act, it shall not be necessary to grant refund under section 143(1) of the Act. This aspect of Supreme Court ruling would practically be applicable for most assessee only for AY 2016-17, since the scrutiny assessment for earlier years would have been completed by now.

With respect to the law relating to newly inserted section 241A of the Act from AY 2017-18 onwards, the Supreme Court has not expressed any view on what is considered as “*adversely affect the interest of the revenue*” which is a pre-requisite for the AO to withhold refund.

Interestingly, shortly after the proposal to introduce section 241A was tabled in 2017, the then CBDT Chairman, had clarified vide media reports that the refunds will not be withheld simply because the case was selected for scrutiny. He stated that refunds would be withheld only in exceptional circumstances such as where Revenue believes that the person can leave the country⁵.

The Supreme Court has not provided any guiding principles in the context of section 241A. However, various High Courts⁶ have earlier ruled in favour of the taxpayers to hold that refunds cannot be withheld merely due to pendency of scrutiny proceedings or on the ground that issues in the scrutiny are similar to past disputed issues. Under the erstwhile provisions of section 241 of the Act (which was similar to section 241A), various High Courts⁷ have ruled that mere pendency of some proceedings under the Act does not adversely affect the Revenue. Therefore, taxpayers having large refunds may need to evaluate this carefully based on facts of their case.

⁵ <https://economictimes.indiatimes.com/news/economy/policy/refunds-to-be-withheld-only-in-doubtful-scrutiny-cases-cbd/articleshow/56999364.cms?from=mdr>

⁶ Huawei Telecommunications (India) Company Private Limited v. UOI (Civil Writ Petition No. 2698 of 2020) (Punjab & Haryana); Vodafone Idea Ltd. v. DCIT (Writ Petition No. 2145 of 2019) (Bombay High Court)

⁷ Leader Valves (P.) Ltd. v. CIT [1987] 167 ITR 542 (Punjab & Haryana); Pioneer Sports Works (P.) Ltd. v. CIT [1997] 227 ITR 89 (Punjab & Haryana)



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